

FILED

OCT 25 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 24-90069

ORDER

MURGUIA, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge. Review of this complaint is governed by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 *et seq.*, and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of the complainant and the subject judge shall not be disclosed in this order. *See* Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. *See* 28

U.S.C. § 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

Many of complainant's allegations are related to an order ("the Order") entered by the district judge first assigned to complainant's underlying lawsuit. The Order denied complainant's request that his case be transferred to a different judge. However, complainant's case was eventually transferred to the district judge named in this complaint ("the subject judge"), because it was related to complainant's previously filed lawsuit.

Complainant alleges that the subject judge improperly overruled the Order entered by the first district judge. To the extent complainant challenges the subject judge's decision to transfer complainant's case to his own chambers, the allegation is dismissed because it relates directly to the merits of the subject judge's decision. *See* 28 U.S.C. § 352(b)(1)(A)(ii) (listing reasons the chief judge may decide to dismiss the complaint, including that claims are directly related to the merits of a decision); *In re Complaint of Judicial Misconduct*, 838 F.3d 1030 (9th Cir. Jud. Council 2016) (dismissing as merits-related allegations that a judge made various improper rulings in a case); Judicial-Conduct Rule 11(c)(1)(B). To the extent

complainant alleges that the subject judge transferred the case out of hostility or prejudice, the allegation is dismissed as unfounded because adverse rulings are not proof of misconduct and complainant provides no objectively verifiable evidence to support the allegation. *See* 28 U.S.C. § 352(b)(1)(A)(iii) (listing reasons the chief judge may decide to dismiss the complaint, including claims that are lacking sufficient evidence to raise an inference that misconduct has occurred); *In re Complaint of Judicial Misconduct*, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Complainant next alleges that the subject judge destroyed the Order and falsified the court record. A review of the record reflects that the Order remains on the docket. This allegation is dismissed as belied by the record and unfounded. *See id.*

Complainant further alleges that by destroying the Order, the subject judge treated him, the original district judge, and others in an egregious and hostile manner. However, the Order was not destroyed, and a review of the record did not disclose hostile or rude treatment of complainant or anyone else. *See In re Complaint of Judicial Misconduct*, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014) (dismissing as unsupported allegations that a judge’s comments were rude,

derogatory, or intemperate because the judge did not use demeaning language or heap abuse on anyone). Because complainant has not offered any evidence of misconduct, this charge is dismissed as unfounded. *See* 28 U.S.C.

§ 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the subject judge had predetermined to transfer complainant's case based on discrimination and without hearing complainant's opposition to the transfer. Although the subject judge dated the transfer order before complainant's objections were filed, the order was not entered until after the objections were filed. It appears that the subject judge received and considered, but ultimately rejected, complainant's objections. Because adverse rulings are not proof of bias and complainant offers no evidence of discrimination, the allegation is dismissed as unfounded. *See id.*

DISMISSED.